

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Special Review No. : 54/2009

In the special review between:

THE STATE

versus

ALPHONCY MOKITJIMA RAMAKETEKETE

CORAM: MOLEMELA, J *et* MOLOI, AJ

JUDGMENT BY: K.J. MOLOI, AJ

DELIVERED ON: 12 FEBRUARY 2009

[1] This matter came before me on review in terms of section 304(4) of the Criminal Procedure Act, No. 51 of 1977 (the CPA). The accused pleaded guilty in the magistrate's court of contravention of section 49(1)(a) of the Immigration Act, No. 13 of 2002 in that the accused, being a Lesotho citizen, entered and remained in the Republic of South Africa without a valid passport nor a valid permit authorising him thereto.

[2] The accused pleaded guilty and the prosecutor accepted the plea and the magistrate dealt with the matter in terms of

section 112(1)(a)(i) of the CPA but imposed a sentence of three (3) months imprisonment which was wholly suspended for a period of three (3) years conditionally.

Section 112(1)(a)(i) states as follows:

“Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea –

(a) the presiding judge, regional magistrate or the magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty only and -

(i) impose any competent sentence, other than imprisonment, or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette.” (My emphasis.)

- [3] On realising that where the matter is treated in terms of section 112(1)(a) and an incompetent sentence of three months imprisonment had been imposed, albeit wholly suspended, the magistrate referred the matter to this court for rectification. The present amount determined by the Minister is R1 500,00. See GN239 in Government Gazette 24393 dated 14 February 1997. The magistrate suggested that the sentence be altered to a fine of R1 500,00 or imprisonment for a period of three (3) months wholly suspended for a period of three (3) years on condition the accused is not convicted of contravention of section 49(1)(a) of Act 13 of 2002 committed during the period of suspension.
- [4] The magistrate is correct in suggesting the alteration of the sentence as indicated.
- [5] As a consequence the following order is made:
- 5.1 The conviction on the charge of contravening section 49(1)(a) of Act No. 13 of 2002 is confirmed.
- 5.2 The sentence imposed by the magistrate is hereby set aside.

5.3 The accused is sentenced to a fine of R1 500,00 or three (3) months imprisonment which is wholly suspended for a period of three (3) years on condition that the accused is not found guilty of contravening section 49(1)(a) of Act 13 of 2002 committed during the period of suspension.

K.J. MOLOI, AJ

I concur.

M.B. MOLEMELA, J

/sp